

### REMARKS

In the Application, Claims 50-57, which have been added by prior amendment, remain pending. Claims 1-49 have been cancelled by a previous Response. In this Response, Claim 50 has been amended.

In the Office Action, Claims 50-53 were rejected under 35 USC § 102 as being anticipated by *Tippmann et al.* (U.S. Patent No. 5,201,364) ("*Tippmann '364*"), while Claims 54-57 were rejected under 35 USC § 103 as being rendered obvious by *Tippmann et al.* (U.S. Patent No. 5,381,670) ("*Tippmann '670*") in view of *Tippmann et al.* (U.S. Patent No. 5,086,693) ("*Tippmann '693*"). Believing that the Claims are allowable over the art of record, it is respectfully requested that the rejections be reconsidered.

It is well settled that a rejection under 35 USC § 102 requires a single prior art reference to disclose each and every element set forth in a claim under consideration. In this regard, *all* of the limitations of a claim, including functional limitations, must be considered when weighing the differences between the claimed invention and the prior art. Meanwhile, a rejection under 35 USC § 103 requires some suggestion or motivation to modify the prior art to arrive at the claimed invention. When considering obviousness, it is impermissible to use hindsight, or the Applicants' disclosure, to provide the necessary suggestion or motivation.

It is submitted that the art of record neither discloses nor suggests each and every limitation set forth in the Claims at issue. By way of example, none of the cited references, alone or in combination, disclose the claimed dough proofing enclosure wherein the top, bottom, opposed side panels, first door and second door are arranged and constructed to substantially prevent ventilation between the enclosed volume and the environment and such that the enclosure is substantially thermally conductive, allowing the enclosed volume to attain a temperature that is normalized with the environment by means of thermal conductivity alone.

Rather than disclose the claimed dough proofing enclosure wherein the top, bottom, opposed side panels, first door and second door are arranged and constructed to substantially prevent ventilation between the enclosed volume and the environment such that the enclosure is substantially thermally conductive, allowing the enclosed volume to attain a temperature that is normalized with the environment by means of thermal conductivity alone, *Tippmann '364* discloses an apparatus (10) having a lower chamber (16) "for holding previously cooked food

articles quite near to a preferred temperature for prolonged time periods." *Tippmann '364*, col. 1, ll. 9-11. The lower chamber (16) possesses a pair of vertically upstanding side walls (18), a top wall (20) and a bottom wall (22). *Id.* at col. 3, ll. 5-7. The lower chamber (16) also possesses closures in the form of thermopane doors (26 and 28). *Id.* at col. 3, ll. 8-10. Rectangular-shaped, tubular mounting members (30) are secured to the side walls (18) in a vertical, spaced-apart relationship. *Id.* at col. 3, ll. 13-15. Each mounting member (30) includes an inlet pipe (32) and an outlet pipe (34) communicating with the interior of the mounting members (30) to permit the circulation of fluid. *Id.* at col. 3, ll. 15-18. A plurality of removable supports (38) rest on and extend between the mounting members (30). *Id.* at col. 3, ll. 19-20. The supports (38) each hold a removable pan (40) containing food articles (42). *Id.* at col. 3, ll. 21-23.

However, *Tippmann '364* does not contemplate the lower chamber (16) as being substantially thermally conductive, as is required by amended Independent Claim 50 of the present invention. This is evident in the use of, *inter alia*, the thermopane doors (26 and 28). Thermopane doors, like those contemplated by *Tippmann '364*, are insular (not substantially thermally conductive) in nature, and are meant to bring the food articles (42) to a desired temperature. Moreover, the desired temperature to which the food articles (42) are to be brought is different from the environment surrounding the lower chamber (16).

Further, it is the tubular mounting members (30) which are responsible for heating and/or cooling, by a heat transfer fluid (56) contained within the sealed tubular mounting members, the food articles (42) contained within the lower chamber (16). *See Tippmann '364*, col. 3, ll. 27-45. Even in an alternate embodiment, *Tippmann '364* contemplates the use of electrical heating elements (68) to provide heat to the food articles (42). *Id.* at col. 3, ll. 54-59.

Thus, *Tippmann '364*, teaches a lower chamber (16) which, through the use of the thermopane doors (26 and 28), the tubular mounting members (3) and the heat transfer fluid (56), serves to assist the food particles (42) in reaching a desired temperature different from the temperature of the environment.

By contrast, in the present invention, it is the enclosure that is substantially thermally conductive for allowing the enclosed volume to attain a temperature that is normalized with the environment by means of thermal conductivity alone. That is, the enclosure seeks to normalize the temperature of the enclosure with the temperature of the environment, defined as the

environment external to the enclosure (See Application, p. 5, ll. 10-11), solely through the use of thermal conductivity.

Further, the combination of *Tippmann* '670 in view of *Tippmann* '693, rather than rendering the present invention obvious, teaches away from the disclosure of the present invention. The Examiner notes that "[i]t would have been obvious to one of ordinary skill in the art to incorporate the enclosure features of [*Tippmann* '693] into the invention of [*Tippmann* '670]." Office Action, p. 3, para. 2. However, Applicants assert that, according to the disclosure of *Tippmann* '670, its is only the heat transfer plates or shelves mounted in a spaced-apart, open relationship – and not the enclosure features identified by the Examiner – that are contemplated by *Tippmann* '670. That is, *Tippmann* '670 does not suggest the use of an enclosure comprising front and rear doors, trays, rollers and a horizontal partition to be utilized within the chamber as disclosed in FIG. 4 of *Tippmann* '670. Moreover, as *Tippmann* '670 discloses the use of an "out-of-cabinet" cooling system, it would be unnecessary (and indeed, it is not suggested) to utilize a cabinet containing a self-contained cooling system.

In actuality, the device (62) in *Tippmann* '670 is contemplated to be an open cabinet of shelves, while the device (63) in *Tippmann* '670, which is a closed cabinet, is cooled through the use of a conventional refrigeration system. See *Tippmann* '670, col. 3, ll. 20-51. Neither of these devices contemplate the use of the heating/cooling system disclosed in *Tippmann* '693 and, in fact, disclaim the use of such a heating/cooling system through its stated use of a conventional refrigeration system. Thus, no suggestion or motivation to modify either of *Tippmann* '670 and *Tippmann* '693 having been found, the combination *Tippmann* '670 with *Tippmann* '693 does not render the present invention obvious.

For at least these reasons, it is submitted that the art of record cannot be said to anticipate or render obvious the claims at issue and, as such, the rejection of the claims must be withdrawn. Specifically, it is submitted that amended Independent Claim 50 is not anticipated by the disclosure of *Tippmann* '364. Moreover, because Claims 51-53 depend from amended Independent Claim 50, it is axiomatic that Claims 51-53 are also not anticipated by *Tippmann* '364. Additionally, it is submitted that the combination of *Tippmann* '670 and *Tippmann* '693 do not provide a teaching or suggesting to modify either of the references to arrive at the invention claimed in Independent Claim 54. Moreover, because Claims 55-57 depend from amended

Independent Claim 54, it is axiomatic that Claims 55-57 are also not rendered obvious by the combination of *Tippmann '670* and *Tippmann '693*.

It is believed that Applicant have complied with all outstanding requirements and it is requested that the Claims be passed to allowance at the earliest possible date. If, however, the Examiner feels that a telephone conference would expedite the allowance of the subject application, the Examiner is requested to contact the undersigned attorney. It is further believed a two-month extension of time fee is due for the filing of this Response. This fee may be charged to our firm's Deposit Account No. 011-156.

Respectfully submitted,

Date: 07 July 2003

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